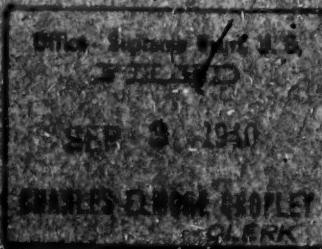


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FILE COPY



No. 393

The Supreme Court of the United States

October Term, 1940

The United States of America

v.

AMERICAN PELZERS

Petition for a writ of certiorari to the Supreme
Court of Canada

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. —

THE UNITED STATES, PETITIONER

v.

ARTHUR PELZER

**PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS**

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims entered in the above-entitled cause on June 3, 1940.

OPINION BELOW

The opinion of the Court of Claims (R. 19-26) is reported in 31 F. Supp. 770.

JURISDICTION

The judgment of the Court of Claims was entered June 3, 1940. (R. 28.) The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTIONS PRESENTED

1. Whether the donor of a gift in trust is entitled under the provisions of Section 504 (b) of the Revenue Act of 1932 to one \$5,000 exclusion for the entire trust or to a separate \$5,000 exclusion for each of the beneficiaries of the trust.
2. If the number of such exclusions is to be determined by the number of beneficiaries, whether gifts in trust in which the rights of the beneficiaries to possession and enjoyment are postponed for a period of years constitute gifts of "future interests in property" for which no exclusions are allowable under Section 504 (b).

STATUTE AND REGULATIONS INVOLVED

Revenue Act of 1932, c. 209, 47 Stat. 169:

SEC. 501. IMPOSITION OF TAX.

(a) For the calendar year 1932 and each calendar year thereafter a tax, computed as provided in section 502, shall be imposed upon the transfer during such calendar year by any individual, resident or nonresident, of property by gift.

(b) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but, in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States. The tax shall not apply to a transfer made on or before the date of the enactment of this Act: (U. S. C., Title 26, Sec. 550.)

* * *

SEC. 504. NET GIFTS.

(a) *General Definition.*—The term "net gifts" means the total amount of gifts made during the calendar year, less the deductions provided in section 505.

(b) *Gifts Less Than \$5,000.*—In the case of gifts (other than of future interests in property) made to any person by the donor during the calendar year, the first \$5,000 of such gifts to such person shall not, for the purposes of subsection (a), be included in the total amount of gifts made during such year. (U. S. C., Title 26, Sec. 553.)

* * * * *

SEC. 1111. DEFINITIONS.

(a) When used in this Act—.

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation. (U. S. C., Title 26, Sec. 1696.)

* * * * *

Treasury Regulations 79, promulgated under the Revenue Act of 1932:

ART. 11. Future interests in property.—The gift of a future interest in property, regardless of the amount thereof, is to be included in determining the total amount of gifts made during any calendar year. A future interest in property is any interest or estate in property, whether vested or contingent, which is limited to commence in use, possession, or enjoyment at some future date or time. Gifts of such interests are taxable subject only to the deductions authorized

by section 505. For the valuation of future interests, see article 19.

* * * * *

STATEMENT

The special findings of fact of the Court of Claims (R. 10-18) may be summarized as follows:

On July 14, 1932, respondent executed a trust instrument for the benefit of his then living grandchildren (eight in number being specifically named) and any other grandchildren that might thereafter be born during the life of the trust. The instrument provided that for a period of ten years from the date of its execution, the income from the trust was to be accumulated, that at the expiration of the ten-year period the trustee was to pay an equal share of the income to each of the grandchildren who were then living and twenty-one years of age or over, and as each grandchild reached twenty-one years of age thereafter the trustee was to pay his share of the income to him. Any other grandchildren born during the life of the trust were to participate therein on the same basis as the eight living grandchildren, and the share of any deceased grandchild was to go to his issue, if any, or in the absence of such issue, to his surviving brother and/or sister, if any, and if none, then to the other grandchildren. The trust was to continue and the income to be distributed until twenty-one years after the death of the last survivor of the eight living grandchildren, at which time the corpus was to be divided among any other then living grandchil-

dren and the issue of all deceased grandchildren *per stirpes.* (R. 10-12.)

On December 28, 1934, respondent executed another trust instrument for the benefit of his wife and three daughters. The income of this trust was to be paid to the four beneficiaries in equal proportions. Upon the death of the wife, her share of the income was to be divided equally among the respondent's grandchildren, and upon the death of any of the daughters, her share of the income was to be divided equally among her children. On reaching the age of twenty-two, each grandchild was to receive his share of the *corpus* of his grandmother's portion, if the grandmother was then deceased, or upon her decease thereafter, and his share of his mother's portion, if his mother was then deceased, or upon her decease thereafter. (R. 13-15.)

During the years 1932, 1933, 1934 and 1935 respondent made gifts to the first trust, and during the year 1934 to the second trust. In addition, respondent made other gifts in the taxable years to individual donees. (R. 13, 15, 16.)

Respondent duly filed gift tax returns for the years 1932, 1933, 1934 and 1935. No question of tax liability for the year 1932 is presented, since the total net gifts in that year was less than the \$50,000 specific exemption. The Commissioner of Internal Revenue found a deficiency and assessed an additional tax for the year 1933 which was duly paid. He accepted as correct the returns filed for the

years 1934 and 1935. The respondent thereafter filed claims for refund for the years 1933, 1934 and 1935 based upon the theory that he was entitled to eight \$5,000 exclusions for each of the gifts to the first trust and to four such exclusions for the gifts to the second trust. These claims were allowed in part by the Commissioner on the basis of a computation permitting one \$5,000 exclusion for each of the gifts to the first trust, and one \$5,000 exclusion for each of the gifts to the second trust, in addition to the exclusions for the gifts to the individual donees. (R. 16-18.)

In the Court of Claims the Government contended (1) that the trusts and not the beneficiaries were the donees of the gifts and, accordingly, only one exclusion was allowable for each gift to each trust, but that (2) if the beneficiaries were to be regarded as the donees, then the beneficiaries of the first trust received future interests within the meaning of Section 504 (b) of the Revenue Act of 1932, *supra*, for which no exclusions were allowable. The Court of Claims held (1) that the gifts set up in both trusts were of present interests, and (2) that each beneficiary named was a donee within the provisions of Section 504 (b), for each of whom the respondent was entitled to an exclusion of \$5,000. (R. 25-26.)

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that under Section 504 (b) of the Revenue Act of 1932 respondent was entitled to

an exclusion of \$5,000 for each beneficiary of the trusts in the computation of the net amount of gifts to the trusts subject to tax in each of the years involved.

2. In holding that gifts to a trust, the income of which is to be accumulated for ten years before any payments are to be made to the beneficiaries, are gifts of present interests in the property transferred.

3. In failing to enter judgment for the United States and to dismiss the petition.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Claims that the beneficiaries and not the trust are the donees and that therefore a \$5,000 exclusion is available for each beneficiary is in direct conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *United States v. Ryerson*, decided July 9, 1940, not yet officially reported but found in 1940 C. C. H., Vol. 4, par. 9576.¹ The court there held that, under Section 504 (b) of the Revenue Act of 1932, the trust is the donee and therefore only one exclusion per trust is available regardless of the number of beneficiaries.

¹ The following decisions, in accord with the decision below, are likewise in conflict with the *Ryerson* case: *Welch v. Davidson*, 102 F. (2d) 100 (C. C. A. 1st); *Rheinstrom v. Commissioner*, 105 F. (2d) 642 (C. C. A. 8th); *Robertson v. Nee*, 105 F. (2d) 651 (C. C. A. 8th); *McBrier v. Commissioner*, 108 F. (2d) 967 (C. C. A. 3d); *Hutchings v. Commissioner*, 111 F. (2d) 229 (C. C. A. 5th); *Early v. Reid* (C. C. A. 4th), decided August 7, 1940, not yet officially reported but found in 1940 C. C. H., Vol. 4, par. 9634.

The *Ryerson* case was based squarely on the earlier decision of the same court in *Commissioner v. Wells*, 88 F. (2d) 339, which held that a gift to a trust, the beneficial enjoyment of which was to commence *in futuro*, was not the gift of a future interest because, for purposes of Section 504 (b), the person to whom the gift was made was the trust and not the beneficiary. Having fixed upon the trust as the donee for purposes of the "future interest" question presented in the *Wells* case; the court consistently held that the trust was the donee for purposes of the "exclusion" question presented in the *Ryerson* case.

The *Wells* and *Ryerson* decisions illustrate the close relationship between the two questions involved in the present case. If, as the court below held, the beneficiaries are to be treated as the donees for the purpose of determining the number of exclusions allowable, then it must be the character of their interest which determines whether the gift was of a present or of a future interest. Here the grandchildren, as beneficiaries of the first trust, were to receive no payment for at least ten years; if they are to be regarded as the donees, it seems plain that the interests they acquired were future interests and that, therefore, the respondent is entitled to no exclusions with respect to the gifts to them. If, on the other hand, as the court held in the *Ryerson* case, the trust is the donee for purposes of Section 504 (b), the gifts were clearly of

a present interest, but only one \$5,000 exclusion was allowable with respect to each trust.

The questions presented are of considerable importance. There are at the present time in various stages of litigation before the federal courts approximately 35 cases in which the problem is involved. In one of these, *Hutchings v. Commissioner*, 111 F. (2d) 229 (C. C. A. 5th), this Court has granted an extension of time within which to file a petition for certiorari. In addition, a considerably larger number of cases are pending before the Board of Tax Appeals and in the Bureau of Internal Revenue.

While Section 505 of the Revenue Act of 1938, c. 289, 52 Stat. 447, withdraws the exclusion in the case of gifts to trusts made on or after January 1, 1939, the amount of tax on gifts made after that date by a donor who made gifts in trust before 1939 will continue to be affected; this is so because, under Section 502 of the 1932 Act, which has not been changed in this respect by subsequent acts, the rate of tax on gifts made each year depends in part upon the aggregate amount of the net gifts made by the taxpayer in preceding years. The Gift Tax Section of the Miscellaneous Tax Unit of the Bureau of Internal Revenue estimates that of the approximately 25,000 gift tax returns filed during the years 1932 to 1938, about one-third involved gifts by trust. It is apparent, therefore, that despite the 1938 Act, the problem will constantly recur unless finally settled by this Court.

CONCLUSION

The decision below is in direct conflict with the decision in the *Ryerson* case, and the questions are of general importance. Therefore, we respectfully submit that this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

SEPTEMBER, 1940.

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